

So Ordered.

Signed this 8 day of February, 2022.



Diane Davis
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY
COURT NORTHERN DISTRICT OF
NEW YORK

In re:

JOHN PICCIRILLI, INC.

Debtor.

Case No. 21-60057

Chapter 11 (Subchapter V)

Hon. Diane Davis

ORDER CONFIRMING SMALL BUSINESS DEBTOR PLAN OF REORGANIZATION

Upon the 2nd Amended Small Business Debtor Plan of Reorganization under Subchapter V of Chapter 11 of Title 11 (the “Bankruptcy Code”) by John Piccirilli, Inc. (the “Debtor”) filed on October 18, 2021 (the “Plan”) with the United States Bankruptcy Court for the Northern District of New York, and the Plan having been transmitted to creditors and equity security holders pursuant to the provisions of §1125 of the Bankruptcy Code; and

Upon the hearing before this Court on December 7, 2021, and no objections to the Plan having been filed, and upon the appearances Orville and McDonald Law, PC (Peter A.

Trial Attorney), Subchapter V Trustee Mark Schlant, Esq., Timothy Lyster Esq. representing First Home Bank, and Marjorie Bialy Esq. representing M&T Bank, and it appearing that the requirements for confirmation set forth in 11 U.S.C. §1129(a), applicable in the Debtor's case pursuant to 11 U.S.C. §1191(a), have been satisfied with respect to the Debtor's Plan;

THE COURT HEREBY FINDS AND DETERMINES¹ THAT:

I. Jurisdiction and Venue.

A. On January 28, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Subchapter V of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

B. The Court has jurisdiction to conduct the confirmation hearing and to confirm the Plan pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Confirmation of the Plan is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

II. Judicial Notice.

D. This Court takes judicial notice of the docket in this Chapter 11 case maintained by the Clerk of the Court including, without limitation, the Plan, all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of this Chapter 11 case.

III. Transmittal and Mailing of Solicitation Package.

The Plan and ballot were transmitted and served in compliance with the Bankruptcy Code, the Bankruptcy Rules and all local bankruptcy rules. Such transmittal and service is sufficient,

¹ This Confirmation Order constitutes the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Rule 9014 and 7052. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate.

and no other or further notice is or shall be required. As established through the Affidavit of Service dated November 12, 2021, the Debtor provided good and sufficient notice of the confirmation hearing and the deadline for submitting ballots and filing and serving objections to the Plan.

IV. Voting.

E. Ballots were cast by creditors. Pursuant to the Debtor's Certification of Ballot Reporting filed on June 21, 2021, 100 percent of ballots cast in Class 1, Class 2 and Class 3 voted to accept the Plan, and 93% in Amount and 67% in number in Class 9 voted to accept the Plan.

V. Compliance with Sections 1122, 1123 and 1190

E. In accordance with Section 1122(a) of the Bankruptcy Code, the Plan classifies each claim against and interest in the Debtor in a manner such that the other claims in each such class(es) are substantially similar to the other Claims or Interests in such class(es). The Plan, therefore, satisfies Section 1122(a) of the Bankruptcy Code.

F. The Plan satisfies each of the applicable provisions of Section 1123 of the Bankruptcy Code.

G. The Plan satisfies each of the applicable provisions of Section 1190 of the Bankruptcy Code.

VI. Burden of Proof

H. The Debtor has satisfied the burden of proof with respect to all elements of Section 1129(a) applicable to the Debtor pursuant to Section 1191 of the Bankruptcy Code. Based on the foregoing and for those reasons that follow, the Court determines that the Plan should be confirmed.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Plan is in all respects confirmed and all of its terms and provisions are approved, pursuant to Section 1129 and Section 1191(a) of the Bankruptcy Code.

2. There were no objections to confirmation of the 2nd Amended Small Business Debtor Plan.

3. The Effective Date of the Plan shall be the date the within order is entered on the Court's docket.

4. The provisions of the Plan shall bind all holders of claims and interests and their respective successors and assigns, whether or not they accept the Plan.

5. The Debtor shall comply with all obligations, terms and conditions of the Plan and this Confirmation Order.

6. Subject to the provisions of and for the purposes of distributions in accordance with the Plan and this Confirmation Order, and pursuant to Bankruptcy Code § 1141(b) and (c) and Section 1186(b), all property of the estate shall revert in the Debtor on the Effective Date.

7. The failure to specifically include or refer to any particular article, section, or provision of the Plan or any related document in this Confirmation Order, shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan and any related documents be confirmed and approved in their entirety.

8. If there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

9. The Debtor shall pay allowed administrative claims pursuant to Section 1191(e) and shall file post-confirmation operating reports indicating the cash disbursements and activities of the Debtor each month after the Plan has been confirmed and until the case has been closed by the Court Clerk's office pursuant to the guidelines of the Office of the United States Trustee.

10. The Debtor is hereby authorized to execute any necessary documents to meet the statutory requirements, if any, for filing necessary papers with the State of New York or any other jurisdiction to effectuate the terms of the Plan.

11. This Confirmation Order shall be deemed to constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or other governmental authority, whether foreign or domestic, or judicial or administrative body, whether foreign or domestic, with respect to the implementation or consummation of the Plan.

12. In accordance with Section 1142 of the Bankruptcy Code, the Debtor and any other entity designated pursuant to the Plan are hereby authorized, empowered, and directed to issue, execute, deliver, file, and record any document, and to take any action necessary or appropriate to implement, consummate, and otherwise effectuate the Plan in accordance with its terms, and all

such entities shall be bound by the terms and provisions of all documents issued, executed, and delivered by them as necessary or appropriate to implement or effectuate the transactions contemplated by the Plan.

13. Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated, or stayed by subsequent order of the Bankruptcy Court, or any other court, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or lien incurred or undertaken by the Plan Proponents prior to the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan including all documents, instruments and agreements related thereto.

14. The Trustee's services shall be terminated pursuant to Section 1183(c)(1) upon substantial consummation of the Plan.

15. The Debtor is hereby discharged of its debts pursuant to Section 1141(d) except as otherwise provided for in the Plan upon entry of the within Confirmation Order.

16. In accordance with Article 6.3 of the Plan, the Court hereby retains jurisdiction over all matters arising under, out of, or related to the Chapter 11 Case and the Plan until entry of a Final Decree.

17. The Debtor shall file a report of substantial consummation not later than thirty (30) days after commencement of payments provided for under the Plan;

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